

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201407332	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/13/2014 1:01 AM	Location of Incident: East 51st Street and 5th Avenue	Precinct: 18	18 Mo. SOL 1/13/2016	EO SOL 1/13/2016	
Date/Time CV Reported Sun, 07/20/2014 4:47 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 07/20/2014 4:48 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS James Coll	01121	918865	ESS 01
2. DTS Robert Mcgee	01498	933983	ESS 01
3. SGT Steven Cameron	01408	943043	MTN PCT
4. LT Michael Gandolfi	00000	938525	MTN PCT
5. POM James Gallagher	26182	891541	MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM William Walsh	17077	935949	MTN PCT
2. POM Timothy Tierney	20591	943876	MTN PCT
3. SDS Samuel Panuccio	02848	875727	DB MAN
4. POM James Smith	26657	933364	MTN PCT
5. POM Robert Holzapfel	05652	949111	MTN PCT
6. POM Darian Shannon	30638	916678	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Michael Gandolfi	Force: Lieutenant Michael Gandolfi used physical force against § 87(2)(b)	
B.DTS James Coll	Force: Detective Specialist James Coll used a nonlethal restraining device against § 87(2)(b)	
C.DTS Robert Mcgee	Force: Detective Specialist Robert McGee used a nonlethal restraining device against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
D.SGT Steven Cameron	Abuse: Sergeant Steven Cameron did not obtain medical treatment for § 87(2)(b)	
E.POM James Gallagher	Abuse: Police Officer James Gallagher did not obtain medical treatment for § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 20, 2014, § 87(2)(b) filed this complaint with the CCRB online on behalf of her cousin, § 87(2)(b) who had died while in police custody on July 13, 2014 (BR 01). The case was simultaneously investigated by Sgt. John Flynn of IAB Group 54 (BR 02 to 19).

Due to the news coverage of this incident (BR 20), this case was placed on the Sensitive Case List.

The statute of limitations for this case expired on January 13, 2016. On August 5, 2014, ADA Barbara Hutter of the Manhattan District Attorney's Office placed the case on a hold (BR 21). As of the closing of this report, the hold remains active. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

On July 13, 2014, at approximately 1:01 a.m., at East 51<sup>st</sup> Street and 5<sup>th</sup> Avenue in Manhattan, § 87(2)(b) a taxi driver, flagged down a police officer, PO Darian Shannon of the 18<sup>th</sup> Precinct, for help with a passenger behaving erratically, § 87(2)(b) PO Shannon requested additional officers via radio. Numerous officers of the 18<sup>th</sup> Precinct, including Lt. Michael Gandolfi, PO James Smith, PO William Walsh, Sgt. Steven Cameron, PO James Gallagher, PO Timothy Tierney, and PO Robert Holzapfel, responded.

Lt. Michael Gandolfi grabbed § 87(2)(b) brought him onto the ground (**Allegation A**). Lt. Gandolfi requested that ESU respond. Upon arrival, Det. James Coll and Det. Robert McGee of ESU placed § 87(2)(b) into a mesh restraint bag (**Allegations B and C**).

EMS was requested to the scene and multiple EMS units responded, including § 87(2)(b) EMTs § 87(2)(b) and § 87(2)(b) FDNY EMTs § 87(2)(b) and § 87(2)(b) and FDNY Lt. § 87(2)(b) DTS Coll and DTS McGee placed § 87(2)(b) on his left side on the stretcher, but as he was brought to the ambulance § 87(2)(b) rolled onto his face. EMT § 87(2)(b) requested that Sgt. Cameron rotate § 87(2)(b) on the stretcher. Sgt. Cameron responded, "He needs to go to Bellevue," and did not rotate § 87(2)(b) as requested (**Allegation D**). EMT § 87(2)(b) then called Lt. § 87(2)(b)'s attention. Lt. § 87(2)(b) asked another officer standing outside the ambulance, identified by the investigation as PO James Gallagher, to rotate § 87(2)(b) onto his back. PO Gallagher did not respond and did not turn § 87(2)(b) over (**Allegation E**). Lt. § 87(2)(b) then approached DTS Coll and DTS McGee, who complied with her request.

DTS Coll did not prepare a memo book entry about this incident (**Allegation F**).

§ 87(2)(b) was transported to § 87(2)(b) where he was pronounced dead on arrival (BR 55). This case resulted in no summonses and no arrests.

On August 15, 2014, a TARU request was returned with negative results (BR 22), and field work was performed on July of 2014, which also returned negative results upon canvass for video footage (BR 23), as IAB and the District Attorney's Office had previously seized video from the TARU camera and from the Saks Fifth Avenue located at 611 5<sup>th</sup> Avenue in Manhattan. As of the closing of this report, both IAB and the District Attorney's office have declined to release the video footage to the CCRB.

### Mediation, Civil and Criminal Histories

- § 87(2)(g) this case was not eligible for mediation.

- On October 10, 2014, § 87(2)(b)'s mother, § 87(2)(b) filed a Notice of Claim against the City of New York, the NYPD, the NYPD Emergency Services Unit, FDNY, and a total of 25 unknown police officers, claiming excessive police force and brutality, personal injuries, false arrest, false imprisonment, assault, battery, severe mental and emotional distress, delay in receiving life-saving medical and emergency treatment, lost income for hospital, autopsy, funeral, and other related expenses, and seeking a total of \$41,000,000 as redress (BR 24).

- § 87(2)(b)  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

### Civilian and Officer CCRB Histories

- § 87(2)(b)  
 [REDACTED]  
 [REDACTED]
- Lt. Gandolfi has been a member of the service for 10 years. There are three prior allegations against him across three cases that occurred between 2006 and 2009, none of which was substantiated. § 87(2)(g)  
 [REDACTED]
- DTS Coll has been a member of the service for 19 years. There are five prior allegations against him across two cases that occurred in 1999 and 2002, none of which was substantiated. § 87(2)(g)  
 [REDACTED]
- DTS McGee has been a member of the service for 12 years. There are two allegations against him across two other cases, one of which occurred in 2006 and the other in 2015, neither of which was substantiated. § 87(2)(g)  
 [REDACTED]
- Sgt. Cameron has been a member of the service for 9 years. There are 10 allegations against him across seven prior cases occurring between 2010 and the present date, none of which was substantiated. § 87(2)(g)  
 [REDACTED]
- PO James Gallagher has been a member of the service for 29 years. There are three prior allegations against him from two cases that occurred in 1990 and in 1999, none of which was substantiated. § 87(2)(g)  
 [REDACTED]

### Potential Issues

- As was discussed above, due to the ongoing DA hold, the investigation has not been able to obtain video footage of this incident.

- The investigation made attempts to contact two further witnesses, a 911 caller, identified by the investigation as § 87(2)(b) and one of the paramedics, § 87(2)(b) but was not able to obtain statements from either of them.

### Conclusion

#### Identification of Subject Officers

- § 87(2)(b) EMT § 87(2)(b) described the officer who refused to acknowledge his request to rotate § 87(2)(b) as a white male who he believed to be a Sergeant based upon the stripes on the sleeves of his uniform, 5'6" to 5'8" tall, in his 30s, slimly built, with short and spiky black hair. EMT § 87(2)(b) also described this officer as a white male with black hair, shorter than EMT § 87(2)(b) (who is 6'1" tall), slightly muscular build, 43 to 44 years old, and possibly a Sergeant. The only officer identified as being present on scene who closely matches the provided description is Sgt. Steven Cameron, a 31 year old white male, 5'8" tall, 176 pounds, with average build, brown eyes, and spiky black hair. § 87(2)(g)
- FDNY Lt. § 87(2)(b) described the officer who refused to rotate § 87(2)(b) on the stretcher as a uniformed white male with salt and pepper hair, in his 40s, between 5'11" and 6'0" tall, with a moustache. Though PO Gallagher denied ever hearing such a request or refusing to acknowledge such a request, as a white male, 49 years old, with salt and pepper hair and a moustache, PO Gallagher most closely matches the provided description. § 87(2)(g)

### Investigative Findings and Recommendations

#### Allegations Not Pleaded

- **Physical Force:** Multiple officers acknowledged that they used some level of physical force against § 87(2)(b) in the course of handcuffing him, including PO Shannon, Lt. Gandolfi, PO Smith, and PO Holzapfel. § 87(2)(g)
- **Refusal to obtain medical treatment:** FDNY Lt. § 87(2)(b) said that after failing to receive a response from PO Gallagher to her request that § 87(2)(b) be rotated, she turned to an ESU officer, identified by the investigation as Det. James McGee, and repeated her request. DTS McGee responded by saying, "He needs to go to Bellevue," and, "He's on his side." Lt. § 87(2)(b) again repeated her request and then was drawn back to the west side of 5<sup>th</sup> Avenue before she could see whether or not DTS McGee complied with her request. According to EMT § 87(2)(b) and EMT § 87(2)(b) after Lt. § 87(2)(b) spoke to them, two ESU officers approached and rotated § 87(2)(b) onto his face. § 87(2)(g)

**Allegation A – Force: Lieutenant Michael Gandolfi used physical force against § 87(2)(b)**

Although § 87(2)(b) filed a Notice of Claim alleging excessive use of physical force and brutality by the police, § 87(2)(b) was not a witness to this incident. § 87(2)(b)'s cousin, § 87(2)(b) who filed this CCRB complaint, was also not a witness to the incident.

Based upon interviews with § 87(2)(b) officer statements, the Medical Examiner's report, and the IAB investigation, the following facts were established:

As per the Medical Examiner's report and autopsy report (BR 26), § 87(2)(b) tested positive for phencyclidine, or PCP. Although § 87(2)(b) had only a low level of PCP in his blood, Dr. Stahl-Herz of the Medical Examiner's office informed IAB that any amount of PCP in a person's blood can cause them to behave irrationally or bring about excited delirium (BR 02). The Medical Examiner's Report also indicated that § 87(2)(b) had the following physical injuries: a small cluster of dry red abrasions on the right cheek, two clusters of abrasions on the right side of the head, an abrasion on and below his left ear, and a contused abrasion on his left cheek, abrasions on his right arm, abrasions on the side of his right hand, and abrasions to both of his knees. There were subcutaneous hemorrhages located on his mid-back and the right side of his lower back, as well as bruises to both his left and right wrists.

On July 13, 2014, § 87(2)(b) (BR 27 and 28) was working as a taxi driver when he picked up a passenger, § 87(2)(b) at 99<sup>th</sup> Street and Lexington Avenue, who initially wanted to be brought to 145<sup>th</sup> Street and St. Nicholas Avenue but later changed his mind and demanded to be brought to the Empire State Building. § 87(2)(b) behaved erratically while in § 87(2)(b)'s cab: he yelled intermittently, opened the rear passenger door while the cab was in motion, stared at § 87(2)(b) and gave confusing directions to him, including telling § 87(2)(b) to drive the wrong way down one-way streets. § 87(2)(b) thought § 87(2)(b) might have been intoxicated based upon his strange behavior, but could not tell on what substance, and did not observe any physical signs of intoxication.

When § 87(2)(b) was driving west on East 51<sup>st</sup> Street from Park Avenue towards 5<sup>th</sup> Avenue, he saw an officer, identified by the investigation as PO Darian Shannon, parked on the south side of East 51<sup>st</sup> Street, and asked for his assistance. PO Shannon attempted to speak to § 87(2)(b) who responded by making strange, non-sequitur statements. PO Shannon then had § 87(2)(b) make a left turn and stop on the east side of 5<sup>th</sup> Avenue between East 50<sup>th</sup> Street and East 51<sup>st</sup> Street in front of St. Patrick's Cathedral. PO Shannon moved his vehicle to park behind § 87(2)(b).

§ 87(2)(b) said that PO Shannon then approached § 87(2)(b)'s cab on its driver side and asked § 87(2)(b) once or twice, "Sir, can you step out?" § 87(2)(b) refused and screamed, "Show me your ID. I'm going to arrest *you*!" PO Shannon then used his radio to request additional officers to the scene. As he did so, § 87(2)(b) exited § 87(2)(b)'s taxi on the passenger side and walked around its rear to approach PO Shannon. § 87(2)(b) then attempted to punch PO Shannon. PO Shannon stepped away, or further north towards East 51<sup>st</sup> Street, to dodge § 87(2)(b)'s strike. § 87(2)(b) followed PO Shannon. § 87(2)(b) started to sing, and appeared to be dancing, as he shook his body from side to side, while continuing to attempt to punch PO Shannon about four or five times. § 87(2)(b) also yelled at PO Shannon, but what he said was unintelligible.

After a minute or two, additional officers began to arrive, identified by the investigation as Lt. James Gandolfi, PO James Smith, PO William Walsh, Sgt. Steven Cameron, PO James Gallagher, PO Timothy Tierney, and PO Robert Holzapfel. By the time the additional officers

arrived, PO Shannon and § 87(2)(b) were standing in the easternmost lane of traffic on 5<sup>th</sup> Avenue facing each other. Four of these officers gathered around § 87(2)(b). When § 87(2)(b) again attempted to punch PO Shannon, these four officers grabbed § 87(2)(b) by his arms and back. § 87(2)(b) was uncooperative in that he moved his body, though § 87(2)(b) could not describe how he did so. The four officers then brought § 87(2)(b) onto the ground. § 87(2)(b) could not remember how § 87(2)(b) landed, and once § 87(2)(b) was on the ground § 87(2)(b) could no longer see him.

§ 87(2)(b) (BR 15) told IAB that he was at work in the area when he observed § 87(2)(b) exit § 87(2)(b)'s taxi. § 87(2)(b) was holding a white towel over his shoulder, with which he repeatedly attempted to strike PO Shannon while PO Shannon backed away. § 87(2)(b) was swaying, unsteady on his feet, and appeared not to be able to speak correctly, as his mouth was not moving properly and his words were slurred and unintelligible. PO Shannon used his radio to request additional units while backing away. § 87(2)(b) asked PO Shannon if he needed help and PO Shannon told him, "No, stay away." § 87(2)(b) called 911 to report that § 87(2)(b) was attacking PO Shannon.

After a few minutes, approximately five or six officers arrived, who gripped § 87(2)(b) by his arms and wrists. § 87(2)(b) resisted by moving his body and arms. An additional officer then grabbed § 87(2)(b) from behind around his torso in what appeared to be a bear hug and they all fell onto the ground, so that § 87(2)(b) was on his right side. The officers then pushed § 87(2)(b)'s left shoulder down so that § 87(2)(b) was facing the ground. The officers then pulled § 87(2)(b)'s arms behind his back and placed him into handcuffs.

PO Shannon's (BR 29) account was highly consistent with § 87(2)(b) in his characterization of § 87(2)(b)'s behavior. PO Shannon was assigned the House of Worship Auto and was working alone at the time § 87(2)(b) approached him. Lt. Gandolfi was the first officer to respond to PO Shannons' request for additional units. Upon responding, Lt. Gandolfi stood to PO Shannons' right side, on the east side of 5<sup>th</sup> Avenue, close to the curb. § 87(2)(b) was standing in a lane of traffic in the street. Once Lt. Gandolfi arrived, § 87(2)(b) approached PO Shannon and slapped him across the bridge of his nose with a towel that he carried in one of his hands. PO Shannon sustained no injuries from this. In response, Lt. Gandolfi gripped § 87(2)(b) from underneath one of his arms. PO Shannon bent down and gripped § 87(2)(b) around his legs. PO Shannon, Lt. Gandolfi, and § 87(2)(b) fell to the ground. § 87(2)(b) landed on his stomach, with his hands underneath his torso. Additional officers, including PO Smith, PO Holzapfel, PO Gallagher, and PO Walsh, then arrived and assisted in trying to pull § 87(2)(b)'s arms out from underneath his body. § 87(2)(b) was thrashing about, kicking his legs, displaying incredible strength, and screaming unintelligibly. PO Shannon was lying on top of § 87(2)(b)'s ankles with his arms wrapped around both of them, attempting to prevent § 87(2)(b) from kicking. After about a minute and a half, an officer who PO Shannon could not identify brought a set of Velcro straps which they placed around both of § 87(2)(b)'s legs, just above where PO Shannon was gripping § 87(2)(b)'s ankles. § 87(2)(b) was handcuffed, but PO Shannon did not observe how.

Lt. Gandolfi (BR 30) said that when he arrived, he attempted to position himself behind § 87(2)(b). As Lt. Gandolfi approached § 87(2)(b) or when he was about four feet from § 87(2)(b) he saw § 87(2)(b) attempt to punch PO Shannon in the face. Lt. Gandolfi did not see if § 87(2)(b) made contact with PO Shannon. Lt. Gandolfi grabbed § 87(2)(b) from behind, underneath his right armpit and across the front of § 87(2)(b)'s chest. Lt. Gandolfi also grabbed § 87(2)(b)'s left shoulder. Lt. Gandolfi brought § 87(2)(b)

§ 87(2)(b) onto the ground. Lt. Gandolfi was unsure how § 87(2)(b) landed, but knew that eventually he was positioned on his front, with his arms crossed at the wrist underneath his torso. Lt. Gandolfi fell with § 87(2)(b) on his left side, near his shoulder. Once on the ground, Lt. Gandolfi tried to pull at the crook of § 87(2)(b)'s elbow, his forearm, and his bicep to get his arms out from underneath him. PO Shannon positioned himself around § 87(2)(b)'s waist area and also attempted to help pull his arms out from beneath his body, though Lt. Gandolfi was unsure how he attempted to do so more specifically. Additional officers arrived to assist, including PO Smith and PO Gallagher, but Lt. Gandolfi was unsure how they assisted. In addition to keeping his arms beneath his body, § 87(2)(b) kicked his legs, mumbled and sporadically screamed unintelligibly. It took approximately three minutes before the officers were able to pull his arms out from beneath his body, pull them behind his back, and handcuff him. Lt. Gandolfi did not remember Velcro straps being used on § 87(2)(b). Once § 87(2)(b) was handcuffed, officers rotated him onto his right side and held him in place on the ground.

PO Smith (BR 31) said that by the time he responded to the scene, § 87(2)(b) was already on the ground. PO Smith positioned himself at § 87(2)(b)'s left side and managed to grip § 87(2)(b)'s left arm, which was underneath his body. PO Holzapfel was positioned opposite PO Smith on the right side of § 87(2)(b)'s body. Lt. Gandolfi was also on § 87(2)(b)'s right side, level with his waist or flank. PO Shannon was around § 87(2)(b)'s feet. § 87(2)(b) was kicking his legs, spitting, screaming unintelligibly, and shifting his body around. After PO Smith gripped § 87(2)(b)'s left arm, § 87(2)(b) shift his weight so that he rolled over on top of PO Smith's wrist, trapping PO Smith's hand underneath him. This caused pain to PO Smith's wrist. PO Smith and the other officers were eventually able to pull § 87(2)(b)'s arms out from beneath his body.

PO Walsh (BR 32) said that when he arrived to the location, § 87(2)(b) was already on the ground, lying on his right side so that he faced the east side of 5<sup>th</sup> Avenue. Lt. Gandolfi, PO Shannon, and PO Smith were struggling with § 87(2)(b). PO Walsh could not remember where Lt. Gandolfi and PO Shannon were around § 87(2)(b) but believed PO Smith was level with § 87(2)(b)'s right shoulder and facing § 87(2)(b). § 87(2)(b)'s right arm was bent underneath his torso, and he appeared to be trying to lift himself up on his left arm. PO Walsh positioned himself next to PO Smith. PO Walsh managed to place one handcuff on § 87(2)(b)'s right wrist and struggled to attach the other end of the handcuffs to his left wrist. § 87(2)(b) resisted by repeatedly thrusting his hips and screamed unintelligibly. When PO Walsh gripped § 87(2)(b)'s arms and hands, they felt sweaty. Another officer – PO Walsh could not recall which – eventually took a second pair of handcuffs, rear handcuffed him fully, and then removed PO Walsh's pair.

PO Gallagher (BR 33) said that by the time he arrived to the scene, § 87(2)(b) was already on the ground. § 87(2)(b) was lying on his right side facing east, yelling incoherently, and spitting. There were four officers surrounding § 87(2)(b) including Lt. Gandolfi, who was positioned near his head or shoulder, and PO Shannon, who was closer to § 87(2)(b)'s legs. PO Smith and PO Holzapfel were also around § 87(2)(b) but PO Gallagher could not remember where they were. Lt. Gandolfi instructed PO Gallagher to call for ESU and to ask EMS for the estimated arrival time. PO Gallagher did both via radio. Lt. Gandolfi also asked if anyone had Velcro restraint straps in their RMP. PO Gallagher went to his RMP, popped the trunk, and retrieved the Velcro straps. PO Gallagher at this time observed a female individual collapse on the west side of 5<sup>th</sup> Avenue. PO Gallagher threw the Velcro straps to Lt. Gandolfi and went to the west side of the street to assist this female. PO Gallagher did not himself physically interact with § 87(2)(b).



PO Tierney (BR 34) did not assist directly in the struggle to handcuff § 87(2)(b) and did not see how officers handcuffed him, but did observe him struggling on the ground with approximately four officers by kicking his legs and shifting his body. PO Tierney placed the Velcro strap retrieved by PO Gallagher around § 87(2)(b)'s legs.

Sgt. Cameron (BR 35) was working with PO Tierney, and also did not assist in the struggle to handcuff § 87(2)(b).

The police documentation relating to this incident, including the AIDED (BR 36), UF-49 (BR 37), the UF-61 (BR 38) the EVENT and communications CD (BR 39 to 43) is generally consistent with the accounts described above. Sgt. Flynn's investigation (BR 02 to 19) concluded that no officer used excessive physical force against § 87(2)(b).

Officers must use the minimum level of physical force necessary to overcome resistance and effect an arrest or restrain an emotionally disturbed person. Patrol Guide Procedure 203-11 (BR 44)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Force: Detective Specialist James Coll used a nonlethal restraining device against § 87(2)(b)**

**Allegation C – Force: Detective Specialist Robert McGee used a nonlethal restraining device against § 87(2)(b)**

It is undisputed that after § 87(2)(b) was handcuffed, two ESU officers, DTS Coll and DTS McGee, were requested to the scene, and that upon arrival they placed § 87(2)(b) into a full-body mesh restraint bag.

In the course of the IAB investigation, photographs were taken of the ESU bag used to restrain § 87(2)(b) (BR 12 to 13). The Medical Examiner's report documents that § 87(2)(b) expired after being restrained by police in a state of excited delirium brought about by acute PCP intoxication (BR 26).

DTS Coll (BR 45) and DTS McGee (BR 46) both explained that when they arrived to the scene, § 87(2)(b) was lying on his right side on the ground. § 87(2)(b) was rear

handcuffed. § 87(2)(b) was thrashing his full body. DTS Coll and DTS McGee spoke briefly with the officers on scene, who informed DTS Coll that § 87(2)(b) had attempted to attack an officer, and that there had been a struggle to handcuff him. DTS McGee added that he also overheard an officer – he could not remember which – state that § 87(2)(b) had attempted to bite an officer.

DTS Coll and DTS McGee both said they used the mesh restraint bag against § 87(2)(b) because they feared that § 87(2)(b) might still pose a threat to himself or to officers. They feared this based upon the following factors: the description of the struggle between § 87(2)(b) and officers that he heard both via radio and from officers at the scene and the manner in which he continued to thrash his body. Although § 87(2)(b) was restrained in handcuffs, he was still displaying physical resistance, and could still have hurt himself or officers by banging his head against the ground, biting, or spitting. § 87(2)(b) was not displaying any signs of medical distress at the time the bag was used. Neither DTS Coll nor DTS McGee remembered having any indication that § 87(2)(b) was intoxicated. DTS Coll described § 87(2)(b) as making nonverbal noises that sounded like “angry grunting,” while DTS McGee described only hearing § 87(2)(b) breathe. Both DTS Coll and DTS McGee thought that the mesh restraint blanket would be the best means of restraining § 87(2)(b) more completely, as it would both prevent him from harming any officers and prevent officers from needing to use further force against him.

DTS Coll did not remember § 87(2)(b) having been restrained with a Velcro strap around his legs. DTS McGee recalled that a Velcro strap was around § 87(2)(b)'s legs when he first responded. The Velcro strap was left upon § 87(2)(b) when he was placed in the mesh restraint bag. The strap was left around his legs in the event that, when the mesh restraint bag was removed at the hospital, § 87(2)(b) began attempting to kick again.

To place § 87(2)(b) into the bag, DTS McGee and DTS Coll laid the mesh restraint bag on the ground next to § 87(2)(b). The officers then lifted § 87(2)(b) and placed him face-down atop the bag. The officers then wrapped the bag around his body and secured it with straps around § 87(2)(b)'s ankles and hips. § 87(2)(b) continued to thrash his body as DTS McGee and DTS Coll placed him into the bag. It took a few seconds to place § 87(2)(b) fully in the bag. Once § 87(2)(b) was secured into the bag, DTS McGee and DTS Coll rotated § 87(2)(b) on to his left side while they awaited the arrival of the ambulance. It took between 15 and 20 minutes for the ambulance to arrive. § 87(2)(b) seemed to relax in those 15 or 20 minutes insofar as he went from thrashing his body to lying still. DTS McGee could see during this time that § 87(2)(b) was still breathing, and heard his breathing become more relaxed.

The ESU report (BR 47) prepared by DTS Coll was generally consistent with the accounts provided by DTS McGee and DTS Coll.

Persons taken into custody, including those considered to be under arrest, the mentally ill, and the emotionally disturbed, should be rear cuffed at the earliest opportunity to reduce the potential for resistance, which may cause injuries. In addition, alternate restraining devices, such as Velcro straps and mesh restraining blankets, shall be used at the earliest opportunity to restrain or to further restrain a subject whose actions or behavior may cause injury to himself or others. Patrol Guide Section 203-11 (BR 44)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Abuse of Authority: Sergeant Steven Cameron did not obtain medical treatment for § 87(2)(b)**

**Allegation E – Abuse of Authority: Police Officer James Gallagher did not obtain medical treatment for § 87(2)(b)**

The circumstances surrounding this allegation are disputed.

It is not disputed that an ambulance from FDNY containing two EMTs, EMT § 87(2)(b) (BR 48) and EMT § 87(2)(b) (BR 49), was the first to receive the report of an EDP on the east side of 5<sup>th</sup> Avenue at East 51<sup>st</sup> Street. It is also undisputed that upon their arrival to the scene, they were flagged down by an unidentified police officer to address a female who had fainted or had a seizure across the street from § 87(2)(b) on the west side of 5<sup>th</sup> Avenue. It is undisputed that a second ambulance was therefore called to the scene to address § 87(2)(b) and that officers were awaiting the arrival of this second ambulance for several minutes. The second ambulance to arrive was from § 87(2)(b) Ambulance Service and contained two EMTs, EMT § 87(2)(b) (BR 50) and EMT § 87(2)(b) (BR 51). An FDNY EMS supervisor, Lt. § 87(2)(b) (BR 52), noticed that there were two separate jobs originating from the same location and decided to respond.

Lt. § 87(2)(b) said that when she arrived she helped EMT § 87(2)(b) and EMT § 87(2)(b) provide treatment to the female patient on the west side of 5<sup>th</sup> Avenue. While doing so, Lt. § 87(2)(b) heard EMT § 87(2)(b) and EMT § 87(2)(b) calling for her. Lt. § 87(2)(b) approached the east side of the street. EMT § 87(2)(b) and EMT § 87(2)(b) told Lt. § 87(2)(b) upon her approach that the police officers had § 87(2)(b) face-down on the stretcher and were refusing to turn him over so that they could provide medical care. Lt. § 87(2)(b) then looked into the back of the § 87(2)(b) ambulance and saw § 87(2)(b) who was lying face-down on the stretcher, in a full-body mesh restraint bag, with his arms handcuffed behind his back. Patients cannot be transported in the prone position, as it places pressure on the chest and can restrict breathing. Lt. § 87(2)(b) turned to an officer, identified by the investigation as PO James Gallagher, standing at the rear of the ambulance and twice said, “He needs to be turned over immediately.” The officer did not respond to Lt. § 87(2)(b).

Lt. § 87(2)(b) saw an ESU officer standing behind PO Gallagher. Lt. § 87(2)(b) repeated her directive to this ESU officer. Lt. § 87(2)(b) then heard screaming from the east side of 5<sup>th</sup> Avenue, and left to address this. Lt. § 87(2)(b) was on the east side of the street for about five minutes when EMT § 87(2)(b) and EMT § 87(2)(b) called her back to the east side of 5<sup>th</sup> Avenue, informing her that § 87(2)(b) had gone into cardiac arrest. By the time Lt. § 87(2)(b) returned east side of 5<sup>th</sup> Avenue, § 87(2)(b) was lying supine on the stretcher and had been removed partially from the mesh restraint blanket. Lt. § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) attempted to resuscitate § 87(2)(b) who was unconscious and not breathing. An Advanced Life Support Unit from FDNY, identified by the investigation as Paramedic § 87(2)(b) and Paramedic § 87(2)(b) (BR 53), arrived to aid in the attempts to resuscitate § 87(2)(b).

EMT § 87(2)(b) said that when he first responded to the scene, § 87(2)(b) was lying face down on the ground. He was fully restrained in a mesh restraint blanket. § 87(2)(b) was not moving, but this did not appear unusual to EMT § 87(2)(b) as once emotionally disturbed individuals are placed inside the blanket they are usually motionless. § 87(2)(b) was not speaking. The officers asked EMT § 87(2)(b) and EMT § 87(2)(b) how they wanted § 87(2)(b) positioned on the stretcher, and EMT § 87(2)(b) and EMT § 87(2)(b) replied that they would like him

on his back or side. The officers placed § 87(2)(b) onto his side, and EMT § 87(2)(b) and EMT § 87(2)(b) strapped him into the stretcher.

As they wheeled the stretcher to the ambulance, § 87(2)(b) rotated from his initial position so that he was lying more face-down on the stretcher. An officer, who was identified by the investigation as Sgt. Steven Cameron, told EMT § 87(2)(b) “I need you to take this patient to Bellevue.” EMT § 87(2)(b) replied that he had no problem doing so, but that he needed to make sure the patient was stable first, and that in order to do that he needed him to be rotated onto his back. Sgt. Cameron did not acknowledge EMT § 87(2)(b)’s request, but insisted that EMT § 87(2)(b) bring § 87(2)(b) to Bellevue Hospital. EMT § 87(2)(b) explained that § 87(2)(b) would be brought to § 87(2)(b) as that was the closest hospital. The officer again insisted that EMT § 87(2)(b) take him to Bellevue Hospital, as he feared that if he was taken there he would be released and then would return to their precinct. EMT § 87(2)(b) said, “Whatever. I need him on his back to see if he’s okay.” EMT § 87(2)(b) repeatedly tapped on § 87(2)(b)’s body during this time to see if he was okay. § 87(2)(b) was not at this time responsive, which EMT § 87(2)(b) assumed was a sign that § 87(2)(b) was upset, rather than in medical distress.

Because numerous people were gathering at the scene, EMT § 87(2)(b) decided it would be best to proceed with placing § 87(2)(b) into the ambulance. Once inside of the ambulance, EMT § 87(2)(b) again attempted to ask Sgt. Cameron to rotate § 87(2)(b) onto his back. EMT § 87(2)(b) estimated that he asked the officer to rotate § 87(2)(b) multiple times over the course of two minutes, but received no acknowledgment of his requests. EMT § 87(2)(b) could not himself rotate § 87(2)(b) because § 87(2)(b) was the NYPD’s prisoner. When Lt. § 87(2)(b) arrived, EMT § 87(2)(b) informed her that the officer was not heeding his request to have § 87(2)(b) positioned on his back. Lt. § 87(2)(b) approached a group of ESU officers, said, “Hey, I need this guy on his back.” Two or three ESU officers then approached and rotated § 87(2)(b) onto his back.

Once § 87(2)(b) was rotated, EMT § 87(2)(b) attempted to stimulate § 87(2)(b) by prodding him. After 30 seconds of attempting to arouse some kind of response from § 87(2)(b), EMT § 87(2)(b) concluded that something must be awry. EMT § 87(2)(b) alerted EMT § 87(2)(b) who in turn alerted Lt. § 87(2)(b) and they began attempts to resuscitate § 87(2)(b).

FDNY Paramedic § 87(2)(b) prepared an Ambulance Call Report, which was generally consistent with EMT § 87(2)(b)’s CCRB testimony (BR 54). Paramedic § 87(2)(b) did not personally witness what he described in the narrative section of the Ambulance Call Report as he was not initially at the scene, and the information contained therein was provided to him by EMT § 87(2)(b).

EMT § 87(2)(b) said that when he first responded to the scene, § 87(2)(b) was lying on the ground in the mesh restraint blanket. Several officers lifted § 87(2)(b) onto the stretcher. § 87(2)(b) was placed onto his side, but was not balanced properly, and eventually tilted so that his face was towards the stretcher. As § 87(2)(b) was placed into the ambulance, EMT § 87(2)(b) asked an officer, identified by the investigation as Sgt. Cameron, who was standing at the rear of the ambulance, to turn § 87(2)(b) onto his back. EMT § 87(2)(b) could not estimate how far away Sgt. Cameron was standing from the rear of the ambulance when EMT § 87(2)(b) made this request, and thought it was possible that he did not hear EMT § 87(2)(b) as there was “so much going on.” Lt. § 87(2)(b) arrived, and EMT § 87(2)(b) explained to her that the officers were not turning § 87(2)(b) over. Lt. § 87(2)(b) then located ESU officers, who rotated § 87(2)(b). EMT § 87(2)(b) thought that about two or three minutes elapsed between when EMT

§ 87(2)(b) requested that § 87(2)(b) be rotated onto his back and when § 87(2)(b) was rotated. After § 87(2)(b) was rotated onto his back, EMT § 87(2)(b) got into the front seat of the ambulance to drive it to the hospital, at which time EMT § 87(2)(b) yelled to EMT § 87(2)(b) that § 87(2)(b) was non-responsive.

Sgt. Cameron (BR 35) said once EMS arrived, two EMTs, identified by the investigation as EMT § 87(2)(b) and EMT § 87(2)(b) wheeled a stretcher over to where § 87(2)(b) was positioned on his side on the ground. EMT § 87(2)(b) and EMT § 87(2)(b) lifted § 87(2)(b) from the ground and placed him on the stretcher on his side with the help of an officer. Sgt. Cameron could not remember which officer assisted them. Sgt. Cameron could not remember if § 87(2)(b) was moving around as he was placed on the stretcher, but did hear him still intermittently moaning and making strange noises. Once Sgt. Cameron saw that § 87(2)(b) was secured onto the stretcher, he walked back to his RMP. While still sitting in his RMP, Sgt. Cameron was called back to the ambulance by PO Gallagher and PO Walsh, who were at the ambulance. Sgt. Cameron approached the rear of the ambulance, where he observed EMS attempting to resuscitate § 87(2)(b) who was lying on his back. Sgt. Cameron at no point observed § 87(2)(b) positioned on the stretcher so that he was lying on his front or face. Sgt. Cameron never heard any EMS personnel request that he be moved from his face onto his back or side, and never refused or heard any officer refuse to oblige this request.

PO Tierney (BR 34), Sgt. Cameron's operator on this date, said that once § 87(2)(b) was placed onto his side on the stretcher he was placed in the ambulance. PO Tierney stood at the rear of the ambulance several feet from § 87(2)(b). PO Tierney could not remember how § 87(2)(b) was positioned on the stretcher in the back of the ambulance. PO Tierney was at the back of the ambulance for only a matter of seconds before he turned to leave the scene with Sgt. Cameron. While PO Tierney and PO Gallagher were in their police vehicle preparing to depart, they were called back to the ambulance via radio. When they returned to the ambulance, they learned that § 87(2)(b) was not breathing. PO Walsh entered the ambulance and aided in removing the mesh restraint bag. PO Tierney did not see § 87(2)(b) positioned partially or fully prone on the stretcher. PO Tierney never heard EMS request that § 87(2)(b) be rotated onto his back or side. PO Tierney never refused to do this, or heard any officers refuse to this.

PO Walsh (BR 32), PO Gallagher's partner, said that he aided ESU and EMS in placing § 87(2)(b) onto the stretcher. § 87(2)(b) was positioned on his side. § 87(2)(b) was yelling as he was placed on the stretcher, which indicated to PO Walsh that he was still conscious. PO Walsh escorted the stretcher to the ambulance. Once he reached the rear of the ambulance, PO Walsh walked back to his police vehicle to retrieve his memo book. It took a few seconds to retrieve it. As PO Walsh walked back to the ambulance from his police vehicle, he saw ESU officers exiting the ambulance. PO Walsh then went back to the ambulance and entered it, planning to escort § 87(2)(b) to § 87(2)(b). When PO Walsh entered the ambulance, § 87(2)(b) was positioned on his back and not responsive to EMT § 87(2)(b)'s attempts to rouse him. Prior to this point, PO Walsh had no indication that § 87(2)(b) was in any kind of medical distress. PO Walsh called for his partner, PO Gallagher, who at that time was standing at the back of the ambulance, to call for Sgt. Cameron or for Lt. Gandolfi. PO Walsh never observed § 87(2)(b) positioned on his face on the stretcher. PO Walsh never heard EMS personnel requesting that he be rotated from his front to his back or side. PO Walsh never refused to do so, or heard any officer refuse to do so.

PO Gallagher (BR 33) said that once § 87(2)(b) was placed in the mesh restraint bag, he was escorted to the ambulance, placed upon its floor next to the stretcher on his right side, and then lifted § 87(2)(b) onto the stretcher. PO Gallagher stood at the rear of the ambulance

at a distance of about 10 or 15 feet during this time. Once § 87(2)(b) was placed on the stretcher, one of the doors of the ambulance was shut, but the other remained open, so that PO Gallagher could still see § 87(2)(b). § 87(2)(b) was placed on his right side on the stretcher. PO Gallagher stood at the rear of the ambulance for five or 10 minutes waiting for EMS to figure out whether they would transport § 87(2)(b) to Bellevue Hospital or § 87(2)(b) as he had been assigned to accompany § 87(2)(b) to the hospital. PO Gallagher never saw § 87(2)(b) rotate onto his face. PO Gallagher never heard any EMS personnel request that § 87(2)(b) be rotated onto his face or side. PO Gallagher never refused to do so, nor did he hear any officer refuse this. PO Gallagher eventually moved away to his RMP to wait. After about five minutes of waiting in his RMP, PO Gallagher saw the door of the ambulance open and PO Walsh appeared. PO Gallagher walked over the ambulance and PO Walsh told him that § 87(2)(b) had gone into cardiac arrest and to call ESU or Sgt. Cameron.

DTS McGee (BR 46) said that he and DTS Coll placed § 87(2)(b) onto the stretcher. § 87(2)(b) was placed on his side and was secured with three straps, one across his shoulders, one across his ankles, and one across his hip, so that he would not fall out of the ambulance. DTS McGee then walked to the west side of 5<sup>th</sup> Avenue to help the female who had a seizure, but by that point she had already received treatment so DTS McGee then returned to his ESU truck. While at his ESU truck with DTS Coll, a female EMS supervisor, identified by the investigation as Lt. § 87(2)(b) approached and told them that someone had placed § 87(2)(b) on his stomach. DTS McGee and DTS Coll told Lt. § 87(2)(b) that § 87(2)(b) had been placed on his left side. Lt. § 87(2)(b) said she wanted § 87(2)(b) to be placed onto his back. DTS McGee never heard Lt. § 87(2)(b) make this request of any other officer, and never heard any officers refuse to flip § 87(2)(b) over. DTS McGee and DTS Coll then approached the ambulance. There was no one in the back of the ambulance aside from § 87(2)(b). § 87(2)(b) was lying so that he was slightly angled onto his face; he was not fully on his front side. DTS McGee and DTS Coll then released § 87(2)(b) from the stretcher straps and rotated § 87(2)(b) so that he was on his back. It took approximately 30 seconds to do so. Once § 87(2)(b) was on his back, DTS McGee was able to see his head and face area. § 87(2)(b) appeared to be breathing normally.

DTS Coll (BR 45) said that after § 87(2)(b) was placed into the mesh restraint blanket, he left § 87(2)(b) with DTS McGee and went to the west side of 5<sup>th</sup> Avenue to attend to the female. DTS Coll remained there for a few minutes before he went back to his ESU truck, where he met DTS McGee. DTS Coll therefore did not observe how § 87(2)(b) was placed onto the stretcher or into the ambulance. While standing at the ESU truck with DTS McGee, they were approached by Lt. § 87(2)(b) who requested that they rotate § 87(2)(b) onto his side. DTS McGee and DTS Coll then entered the back of the ambulance, at which time they observed § 87(2)(b) lying on the stretcher face-down. DTS Coll and DTS McGee released § 87(2)(b) from the stretcher straps and rotated him onto his back. DTS Coll was able to see § 87(2)(b) through the mesh of the restraint blanket once he was rotated onto his back, and saw that he was breathing normally and that his eyes were open. DTS Coll had no indication that Lt. § 87(2)(b) had requested that any other officer rotate § 87(2)(b) nor did he ever hear any officer refuse to rotate him.

Upon arrival at the scene of an AIDED incident, officers are required to render reasonable aid to a sick or injured person. Uniformed members of the service concerned shall cooperate with ambulance/hospital personnel in every reasonable manner. NYPD Patrol Guide Section 216-01 (BR 56)

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
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